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Chairman: Mr. Mochochoko ..... (Lesotho)

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The meeting was called to order at 3.10 p.m.

Agenda item 156: Report of the United Nations Commission on International Trade Law on the work of its thirty-second session (*continued*) (A/54/17)

1. **Mr. Anwar** (Pakistan) said that the work of the United Nations Commission on International Trade Law (UNCITRAL) was particularly important in the era of globalization and liberalization of the world economy. The Commission's work on the draft legislative guide on privately financed infrastructure projects was of particular interest to countries like his own which sought foreign capital to finance such projects. His delegation welcomed the emphasis the Commission had placed on the need for a balance between the objective of attracting private investment for infrastructure projects and the protection of the interests of the host Government and the users of the infrastructure facility. Because the diversity of national legal traditions and administrative practices made formulating model legislation difficult, his delegation supported the idea that legislative recommendations should be reviewed with the assistance of experts, subject to the participation of all Member States.

2. His delegation regretted that no consensus had been achieved on the preparation of uniform rules on digital signatures but noted with satisfaction that the Commission would continue its work in that area. The Commission's work on the draft Convention on Assignment in Receivables Financing was of particular importance for the developing countries, since clear and unambiguous rules would increase the availability of credit financing to such countries at more affordable rates.

3. While the proposal by Australia concerning the establishment of a working group to develop a model law on corporate insolvency was a useful one, his delegation recognized the difficulties the Commission was likely to encounter in developing universally acceptable model legislation. It was therefore in favour of convening a working group to prepare feasibility proposals for the Commission's consideration at its thirty-third session.

4. The effective participation of the developing countries in the work of the Commission was essential, and the Commission's training and technical assistance activities for developing countries were equally important. His delegation therefore supported the Commission's recommendations for an increase in both human and financial resources to ensure the effective implementation of its training and assistance programme.

5. **Mr. Politi** (Italy) welcomed the progress that had been made at the Commission's thirty-second session. His delegation was particularly pleased that the Commission had been able to examine the entire draft of the legislative guide on privately financed infrastructure projects which represented a considerable improvement over the previous draft. It was important to keep a balance between attracting private investment for infrastructure projects and protecting the interests of the host Government and the users of the infrastructure facility. His delegation looked forward to a comprehensive review of the guide by the UNCITRAL secretariat, with the assistance of experts, and to a rapid conclusion of work on that subject.

6. His country also attached great importance to the draft uniform rules on legal aspects of digital signatures and certification authorities. Every effort should be made to ensure that they were ready for consideration and adoption by the Commission at its next session. Future work in the field of electronic commerce should concentrate on areas such as on-line dispute settlement systems and applicable law and jurisdiction.

7. Although a number of specific issues remained to be addressed, in the preparation of the draft Convention on Assignment in Receivables Financing, his delegation was confident that the draft would be ready for consideration by the Commission at its thirty-third session. The unification of applicable rules would enhance the certainty and predictability of credit obtained on the basis of receivables and would increase the availability of credit at more affordable rates, thereby benefiting many developing countries.

8. With regard to the possible future work of the Commission in the area of international commercial arbitration and insolvency law, his delegation was in favour of referring a number of priority items relating to international commercial arbitration to a working group and looked forward to the outcome of the next session of the Working Group on Insolvency Law, which was to prepare a feasibility proposal.

9. The further development of the case law on UNCITRAL texts and the activities undertaken through the Commission's training and assistance programme were evidence of the Commission's continuing commitment and dedication in performing its tasks. His delegation attached the utmost importance to the efforts to coordinate the Commission's work with that of other bodies active in the field of international trade law, in particular the Economic Commission for Europe (ECE) and the International Institute for the Unification of Private Law (UNIDROIT).

10. **Ms. Willson** (United States of America) noted that the Commission had continued to focus on technical and achievable legal and economic projects which were potentially of benefit to States at all levels of economic development and in every region. The Commission was particularly to be commended for its non-politicized approach to current developments in trade and commerce.

11. Her delegation welcomed the considerable progress made in three areas by the Commission at its thirty-second session. First, it was to be hoped that the draft Convention on Assignment in Receivables Financing would be completed and that the Commission would be able to recommend that the Sixth Committee should submit it to the General Assembly for adoption at its fifty-fifth session. The draft Convention ought to receive wide support from developing and emerging States which stood to gain most from its treaty regime.

12. Progress had also been made in producing legislative guidance for States that wished to enhance their infrastructures through new means of international project finance. The most recent finance methods linked private markets with governmental supervision and were compatible with efforts to bring about privatization and a reduction of direct expenditures in many areas. Those arrangements were sometimes incompatible with older local laws, however. In order to ensure that the developing and emerging States derived the maximum economic benefit from the new arrangements, the Commission's legal standards and guidance must take careful note of international financial and capital markets and foster a willingness to modify existing national laws. While her delegation hoped that work on the project could be completed at the Commission's next session, more time might be necessary to achieve those goals.

13. Work had also progressed in the effort to find consensus on legal guidance for electronic signature and message authentication systems. However, it might be premature to seek to finalize the topic at the present stage, since commercial applications were developing rapidly. The Commission could, if necessary, consider resuming its work when the application of the relevant technologies in the commercial marketplace had become sufficiently clear to enable States to reach a meaningful consensus on legal standards.

14. The Commission should also consider, at its earliest convenience, possible new projects in such areas of electronic commerce as the electronic transfer of rights to tangible goods, rights in electronic data and electronic transaction contract law. Increasing interest was being expressed in a proposal for a multilateral convention which would include those sections of the Commission's Model Law on Electronic Commerce that had gained wide support.

15. Two other important topics, international commercial arbitration and cross-border insolvency of commercial entities, had been discussed at the thirty-second session. With regard to the former, her delegation was prepared to support further work if there was a consensus on the prospects for achievable projects. The interest expressed in the second topic reflected wide recognition of the important work completed by the Commission on that topic in 1997. She was pleased to note that the provisions of the UNCITRAL Model Law on Cross-Border Insolvency were contained in a bill before the United States Congress which, if adopted, would revise United States bankruptcy laws. Her delegation hoped that other States would consider taking similar action with a view to providing better solutions for economically distressed enterprises whose workforce, assets and markets spanned the borders of a number of countries.

16. A proposed topic for consideration at the Commission's thirty-third session was whether there was sufficient support among maritime and shipping interests for a new effort to seek harmonization in the international carriage of goods by sea. Her delegation would support that effort if it was undertaken, and agreed that the scope of such work should cover all relevant issues and should seek accommodation of the various international instruments currently in existence.

17. Many countries, especially the developing and emerging States, had benefited from the technical assistance and regional programmes provided by the UNCITRAL secretariat, which had performed all of its tasks in support of the Commission in a commendable manner. It would be a continuing challenge to maintain that high level of professionalism with existing resources. In that connection, her delegation had listened with interest to the comments made at the 3rd meeting by the representative of Japan and agreed that the various ways of addressing increasing workload demands should be examined carefully.

18. **Mr. Balanandan** (India) welcomed the progress made by the Commission in the preparation of a legislative guide on build-operate-transfer projects, which would assist States in preparing or modernizing national legislation relating to such projects, thereby accelerating infrastructure development. It was necessary to find a balance between the interests of investor companies and those of host Governments and users.

19. His delegation noted that, in finalizing the text of the draft Convention on Assignment in Receivables Financing,

the Working Group on International Contract Practices had sought to avoid conflicts between the draft Convention and other instruments, including the draft UNIDROIT Convention on International Interests in Mobile Equipment. Where such conflicts were unavoidable, his delegation considered that they should be settled by providing for the precedence of one or the other text.

20. His delegation shared the preliminary conclusion of the Working Group on Electronic Commerce regarding the feasibility of preparing draft uniform rules on digital signatures and certification authorities and believed that it would be premature to make any decision on the exact scope and form of such rules. The Working Group should focus on issues of digital signatures, and the uniform rules should be consistent with the media-neutral approach taken in the UNCITRAL Model Law on Electronic Commerce, without discouraging the use of other authentication techniques.

21. Regarding the Commission's possible future work in the field of international commercial arbitration, he recalled the practical problems that had been identified during the special observation of New York Convention Day in 1998. His delegation appreciated the UNCITRAL secretariat's continued monitoring of the implementation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, its work in publicizing court decisions and arbitral awards, and its programme of training and technical assistance.

22. **Mr. Mekprayoonthong** (Thailand) welcomed the progress made by UNCITRAL on the draft legislative guide on privately financed infrastructure projects, which would be of tremendous use to developing countries. His delegation endorsed the Commission's efforts to maintain an equitable balance between the need to attract private investment for infrastructure projects and the need to protect the interests of the host Government and users.

23. The use of working groups, such as the Working Group on International Contract Practices, to carry out the Commission's mandate had been successful. His delegation hoped that at its current session the Working Group would expedite work on the draft Convention on Assignment in Receivables Financing so that it could be adopted by UNICTRAL at its thirty-third session. While his delegation agreed that the draft Convention had the potential to increase the availability of lower-cost credit, it reaffirmed its position that assignment under the draft Convention should not adversely affect the rights and obligations of debtors. Moreover, the draft Convention should take into account the varying legal principles of Member States so as to facilitate its wide acceptance.

24. A draft law on electronic commerce, based on the UNCITRAL Model Law on Electronic Commerce, was about to be submitted to the Thai Cabinet for approval, and his country was drafting several other laws on the same basis. The Commission's repository of information on state-of-the-art electronic commerce and the experience of other countries could provide a useful reference for national lawmakers. UNCITRAL should therefore continue to provide training and technical assistance to developing countries through trade law seminars and exchanges of expertise. While acknowledging the Commission's budgetary constraints, his delegation hoped that appropriate financial support would be provided by developed countries and the private sector for that purpose.

25. His Government also supported the Commission's decision to undertake further studies on international commercial arbitration and cross-border insolvency. While a certain degree of harmonization had been achieved in those areas, deliberations on many issues were still pending. It was to be hoped that further progress would be made in due course, especially as the economic crises in South-East Asia highlighted the need for economic laws to sustain the region's recovery.

26. **Mr. Franco** (Colombia) said that his delegation, while associating itself with the statement made by the representative of Mexico on behalf of the Rio Group, wished to comment on the progress of specific trade law issues in his country.

27. His delegation noted with satisfaction that the draft legislative guide on privately financed infrastructure projects was complete. The preparation of such a guide was important for developing countries and countries with economies in transition. Clear rules offering legal security to investors with regard to returns on their long-term investments could reduce the need for public guarantees. The legislative guide should therefore contain provisions to ensure continuity in the provision of services and the observance of safety and environmental rules of interest to host Governments. In an effort to eliminate uncertainty for investors, the Colombian Constitution had been amended in 1999 to abolish administrative expropriation without compensation.

28. On 18 August 1999 the President of Colombia had signed a law on electronic commerce, based on the UNCITRAL Model Law on Electronic Commerce, that defined and regulated the use of data messages and digital signatures and authorized the use of a certification system. The new law was intended to regulate the trends in commercial transactions carried out by means of electronic data interchange, with a view to providing the legal security

necessary for normal economic development. It would enable his country to enter the new millennium with a legal structure adapted to technological and commercial change. In implementing such a law, Colombia was a leader in Latin America.

29. On 15 June 1999 the Colombian Congress had approved the 1980 United Nations Convention on Contracts for the International Sale of Goods. That decision was currently under review by the Constitutional Court pending its approval by the President, and it was to be hoped that the instrument would be ratified in due course.

30. **Mr. Monagas-Lesseur** (Venezuela) said that his delegation fully supported the remarks made by the representative of Mexico on behalf of the Rio Group and welcomed the Commission's completion of the draft legislative guide on privately financed infrastructure projects. In refining the guide, it would be important to maintain the appropriate balance between attracting private investment and protecting the interests of the host Government and users of the infrastructure. In addition, the guide should contain alternatives appropriate to the various legal systems, with emphasis on clauses that could serve as legislative models.

31. Despite the obstacles the Working Group on Electronic Commerce had encountered in reaching a consensus on a legal framework for the draft uniform rules on electronic signatures, his delegation believed that the Working Group ought to be able to complete its work as mandated. Moreover, the Working Group was well equipped to prepare a draft international convention that would incorporate and further develop the rules contained in the Model Law on Electronic Commerce and the draft uniform rules on electronic signatures.

32. There was an urgent need for a uniform law or general rules on assignment in receivables financing, which would increase the availability of lower-cost credit for businesses in developing countries. The Working Group on International Contract Practices should therefore complete its work on the draft Convention so that the Commission could consider it at its thirty-third session.

33. With regard to possible future work of the Commission, his delegation supported the establishment of a working group to consider possible issues in international commercial arbitration and the feasibility of developing a model law on conciliation. In addition, the financial crises of recent years had underscored the need for strong insolvency and debtor-creditor regimes. His delegation therefore approved the Commission's decision to instruct the Working Group on Insolvency Law to explore the possibility of preparing a model law on corporate insolvency.

34. His delegation wished to see greater emphasis given to training and technical assistance in order to promote greater awareness of existing UNCITRAL texts, particularly in developing countries that lacked specialists in international trade law. Wider participation by nationals of developing countries in the internship programme of the Commission secretariat would also be valuable, and UNCITRAL texts should be placed on the Commission's Web site in all official languages of the Organization. His delegation hoped that the General Assembly would allocate the necessary funds to carry out those programmes. Lastly, he noted that publication of the *UNCITRAL Yearbook* was considerably behind schedule; every effort should be made to publish it in all the official languages and to distribute it to Member States in a timely fashion.

35. **Mr. Suhendar** (Indonesia) said that over the years the Commission had been very effective in helping developing countries to engage in international trade on the basis of equality with developed countries. In the development of international trade law, the principle of equality among States should be interpreted as the right of every State and its people not just to exist but also to develop. International trade law should embody a set of rules promoting equity, redress and compensation for the inequality prevailing among nations.

36. In preparing of the legislative guide on privately financed infrastructure projects, it was important to maintain a balance between enhancing foreign investment for infrastructure projects and protecting the interests of host countries and users. The guide's usefulness to Governments in reviewing, updating and adopting national legislation on the subject could not be overemphasized. His delegation believed that the text of the guide offered sufficient flexibility to meet the needs of authorities working under different legal systems.

37. Guidance from the Commission was essential to developing countries in the preparation of national legislation on electronic signatures. In its work on public key infrastructures, the Working Group on Electronic Commerce should consider various models and structure its rules around the subscriber function, the certification function and the relying function. His delegation was pleased that the Commission was considering the recommendations of the Centre for the Facilitation of Procedures and Practices for Administration, Commerce and Transport (CEFACT) concerning electronic equivalents for the terms "writing", "signature" and "document" and the preparation of an

omnibus protocol to multilateral treaties to facilitate increased use of electronic commerce.

38. The availability of credit at more affordable rates in developing countries was crucial for promoting international trade. His delegation therefore looked forward to the completion of work on the draft Convention on Assignment in Receivables Financing.

39. In its future work, UNCITRAL should develop new rules on international commercial arbitration and conciliation and assess the existing rules in order to clarify the ambiguities they contained. His delegation commended the Commission's efforts to expand training and assistance programmes and to disseminate UNCITRAL texts, in part by using its Web site. It was to be hoped that financial resources would be increased to ensure implementation of those programmes. He urged the Commission to coordinate its efforts with those of international organizations such as the Afro-Asian Legal Consultative Committee in developing a uniform international body of trade law.

40. **Mr. Shin Hyun-Soo** (Republic of Korea) said that the legislative guide on privately financed infrastructure projects would be of great use to countries in development or transition that were unable to meet their increasing infrastructure needs through public capital investment. His delegation agreed that the UNCITRAL secretariat, assisted by experts, should review all the recommendations made and submit a draft text for adoption as soon as possible.

41. Given the drastic increase in Internet users worldwide, there was a pressing need for uniform rules to facilitate electronic commerce. His delegation fully supported the decision of the Working Group on Electronic Commerce to focus on public key infrastructures, because it felt that that approach would accelerate the final drafting of uniform rules on electronic signatures. It also agreed that emphasis on typical functions rather than a specific model would make it easier to develop a media-neutral set of rules at a later stage.

42. The draft Convention on Assignment in Receivables Financing would help to increase the availability of lower-cost credit, and his delegation hoped that it would be ready for consideration by the Commission at its thirty-third session. However, care must be taken to ensure that the different legal systems in use throughout the world were accommodated in the draft Convention.

43. The Republic of Korea considered it important to put existing UNCITRAL conventions and model laws into effect. The Government had passed national laws on electronic commerce and electronic signatures that were based on the UNCITRAL Model Law on Electronic Commerce and had recently appointed a national correspondent to monitor the implementation of the Commission's work. His delegation valued seminars conducted by the Commission secretariat in over 20 countries to promote awareness of UNCITRAL texts and hoped that such a seminar could be held in the Republic of Korea in the near future.

44. **Mr. Enkhsaikhan** (Mongolia) welcomed the Commission's emphasis at its thirty-second session on developing a legislative guide on privately financed infrastructure projects, an issue of great importance for developing countries and countries with economies in transition like his own. Mongolia had limited sources of domestic financing and technology but was keenly interested in developing its infrastructure. Its policy and legislation were directed at creating an appropriate legal environment for foreign investment by according equal treatment to domestic and foreign investors. The latest version of the draft legislative guide contained the main principles that needed to be reflected and struck a good balance between the interests of the parties involved. Despite some unresolved issues, it should be possible to adopt the draft at the Commission's thirty-third session.

45. Although not yet directly involved in electronic commerce, Mongolia, as a vast country located far from world markets and major trade routes, was eager to develop that promising form of trade and therefore welcomed the progress made on the draft uniform rules on electronic signatures. Their preparation was not only feasible but urgent, and his delegation hoped that they could be adopted at the next session of the Commission.

46. He agreed with the representative of Hungary that the draft Convention on Assignment in Receivables Financing could minimize the competitive disadvantages experienced by parties from developing countries or countries with transitional economies. It would also help their partners. His delegation hoped that the Commission would be able to finalize the draft Convention at its next session.

47. With regard to possible future work on insolvency law, his delegation agreed with the view that strong insolvency and debtor-creditor regimes were important for preventing or limiting financial crises and promoting rapid and orderly recovery from excessive indebtedness. There was thus a need to update insolvency laws and practices. The Commission's experience in drawing up the Model Law on Cross-Border Insolvency equipped it to address the issue, but duplication of work in that area should be avoided.

48. In view of the growth in volume and demand, it was evident that the system for the collection and dissemination of case law on UNCITRAL texts was highly successful and should be enhanced by strengthening the Commission secretariat, *inter alia*, by increasing the resources allocated to the Commission in the budget for the 2000-2001 biennium. He was pleased to report that the first UNCITRAL seminar ever held in Mongolia had enabled the Government to institute or consider changes in national legislation to harmonize it with UNCITRAL texts.

49. **Ms. Aguiar** (Dominican Republic) said that the process of economic reform and linkage to the global economy in the Dominican Republic had inspired renewed interest there in the work of the Commission. Since its development strategy was based on encouraging privatization, foreign direct investment and trade in services, the Government was particularly interested in the Commission's work in the area of privately financed infrastructure projects, electronic commerce and arbitration. She welcomed the substantial progress that had been made in preparing the legislative guide on privately financed infrastructure projects, which should be a useful tool in the complex process of recapitalization currently being undertaken in her country.

50. As a tourist destination and a country located in a strategic geographical region, the Dominican Republic experienced a heavy volume of electronic transactions; uniform rules on electronic signatures would help to create confidence in users of electronic means of payment.

51. Her delegation was also highly interested in the Commission's work on international commercial arbitration. The UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules had had less success than hoped, in part because of a failure to disseminate them in developing countries. She agreed with previous speakers concerning the need to expand the Commission's work in developing countries, including, perhaps, an enhanced programme of internships with the Commission secretariat. A greater allocation of resources to the Commission would help it promote awareness of its work among Member States and enable it to hold regional seminars in both academic and business circles.

52. **Mr. Hanson-Hall** (Ghana) observed that the draft legislative guide on privately financed infrastructure projects covered most of the central issues and welcomed the fact that the perspectives of both the private and the public sectors had been taken into account. The guide had also taken due cognizance of different legal systems and endeavoured to achieve a balance that would be attractive to private investors, government investment and users, an approach welcome to countries like his own, which were seeking to attract capital through build-operate-transfer projects. The Commission's analysis of the discrepancies likely to arise in different legal systems with regard to such projects and its proposed modifications to ensure fair competition had been a major step forward. UNCITRAL had done well to take a cautious approach in such sensitive areas as the termination of projects, compensation and dispute settlement.

53. Significant progress had been made by the Working Group on Electronic Commerce. If consensus could be found on an internationally acceptable legal framework, it might be possible to complete work on the draft uniform rules on electronic signatures during the next session of UNCITRAL.

54. The draft Convention on Assignment in Receivables Financing would lead to increased availability of credit at more affordable rates and would eliminate or limit the competitive disadvantages experienced in the developing countries and countries with transitional economies. His delegation urged a speedy resolution of the outstanding issues, particularly those relating to the scope of the future Convention.

55. Regarding future work of the Commission, Ghana agreed that it was appropriate for UNCITRAL to undertake the much-needed task of modernizing insolvency law, although it should coordinate with other international organizations already working in the area. Since better use should be made of documents and information accumulated by UNCITRAL, the ongoing development of the system for the collection and dissemination of case law on UNCITRAL texts was welcome, but the Commission secretariat should be strengthened in view of the increased workload. His delegation was concerned that a number of requests for the useful training and technical assistance provided by UNCITRAL had had to be turned down for lack of resources, and the secretariat needed to be substantially strengthened to undertake those tasks as well.

56. **Mr. Korzachenko** (Ukraine) reviewed the recent advances UNCITRAL had made in several important areas and urged the completion in particular of the draft legislative guide on privately financed infrastructure projects. The Commission had rightly chosen a balanced approach that protected the interests of all involved, and its restructuring of the guide should prove beneficial.

57. Given the extensive and favourable experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration and the wide use of the UNCITRAL Arbitration Rules and Conciliation Rules,

his delegation welcomed the Commission's decision to consider several new topics in the area of commercial arbitration and suggested that priority should be given to conciliation and enforceability of settlement agreements. The Commission's monitoring of the implementation of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards was also valuable.

58. UNCITRAL had usefully promoted the uniform application of the legal documents it adopted, and the training and technical assistance it provided should be encouraged on a long-term basis. That was an argument for increasing both the human and financial resources available to its secretariat. Given the range of work being done in the progressive development of international trade law, there must be close cooperation between UNCITRAL and the other international organizations active in the field.

59. **Mr. Manongi** (United Republic of Tanzania) said that the Commission's useful and relevant work had often served as a valuable reference for his country's own legislative practice. UNCITRAL must be given the support it needed.

60. His delegation looked forward to the forthcoming completion of the draft legislative guide on privately financed infrastructure projects and was gratified by the concern to balance the interests of both the public and the private sectors.

61. One of the issues still to be resolved in connection with the draft Convention on Assignment in Receivables Financing was the question of debtor-protection in the relationship with the assignee. That matter was of interest to the Governments of developing countries because they, or government-supported enterprises, most often entered into costly procurement contracts, which usually made them debtors. Such Governments were naturally wary of having their obligations to pay assigned or transferred to creditors they had not themselves carefully selected. His delegation was therefore of the view that anti-assignment clauses in public procurement contracts should be treated differently from such clauses in other types of contracts.

62. **Ms. Hallum** (New Zealand) observed that New Zealand had made the UNCITRAL model laws relating to arbitration and the international sale of goods part of its domestic law and had recommended the adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

63. She welcomed the significant progress that had been made in the preparation of the legislative guide on privately financed infrastructure projects. Her delegation agreed that the guide should be sufficiently broad-based to be useful to Governments from a range of constitutional and legal traditions.

64. Valuable work had also been done in the preparation of draft uniform rules on electronic signatures. That the Working Group on Electronic Commerce had been grappling with a means of producing draft rules based on a legislative policy around which consensus could be build was not surprising, given the rapid development and fluidity of the topic. However, she welcomed the Working Group's decision to focus on public key infrastructures and the three functions common to all of them as a way of achieving an internationally acceptable framework. New Zealand's preference was for a set of rules that did not overregulate the use of electronic signatures.

65. In implementation of the UNCITRAL Model Law on Electronic Commerce, the New Zealand Law Commission would shortly be proposing the adoption of an Electronic Transactions Act, which would remove legal barriers to that method of trading. The Model Law was also being actively promoted in the Asia and Pacific region.

66. **Mr. Akinsanya** (Nigeria) drew attention to the invaluable training and technical assistance UNCITRAL provided to developing countries. Unfortunately, the Commission was hampered in discharging that major assignment by inadequate funding; its secretariat should therefore be strengthened and given the resources it needed.

67. He hailed the completion of the draft legislative guide on privately financed infrastructure projects, whose recommendations would guide national lawmakers in the direction of fairness and transparency.

68. In a globalized world, the use of electronic signatures would be an advantage in international trade, and his delegation was encouraged by the determination of the Working Group on Electronic Commerce to formulate rules on the matter despite the inherent difficulties. It also believed that the establishment of a working group on arbitration had been a step in the right direction. However, while collaboration between UNCITRAL and other international bodies working in the areas of insolvency regimes or international commercial arbitration was needed, the Commission must zealously safeguard its identity and independence, which gave the developing countries in particular such confidence in its work.

69. **Mr. Vasquez** (Ecuador), after endorsing the statement made by the representative of Mexico on behalf of the Rio Group, said that the text of the draft legislative guide on privately financed infrastructure projects must now be reviewed as a whole for consistency and flexibility and to

ensure that it reflected a proper balance between the interests of investors, Governments and users. The developing countries would find the guide useful in attracting foreign investment, while investors in developed countries would benefit from clear norms in that area. The guide would also advance the modernization of the applicable domestic laws, and UNCITRAL should be able to adopt it at its next session. Work on the draft Convention on Assignment in Receivables Financing, which would increase the availability of lower-cost credit, had likewise progressed to the point that the text was ready for adoption at the same session.

70. Ecuador was confident that the Working Group on Electronic Commerce would reach consensus on the contentious issues relating to the draft uniform rules on electronic signatures and that it would address new issues as they arose. As for possible future work on insolvency law, his delegation welcomed the forthcoming exploratory session of the Working Group on Insolvency Law on the interesting proposal to develop a model law on corporate insolvency that would encourage the adoption of effective national corporate insolvency regimes.

71. Since the Commission would soon be concluding its work on a number of topics, it should begin to assess the priority of new areas in which it could usefully contribute to predictability in trade relations and to the expansion of international trade to the benefit of all countries. UNCITRAL might, for instance, explore the legal aspects of the financing of international trade in the light of the recent financial crises that had had such adverse effects on the external trade of developing countries.

72. The Commission secretariat had done excellent work in gathering and disseminating information on court judgements and arbitral awards relating to UNCITRAL conventions and model laws in order to promote their uniform interpretation and application and draw international attention to them. UNCITRAL was also doing valuable work in providing training and technical assistance to developing countries, and it was unfortunate that it had not been able to comply with all the requests it had received. The secretariat must be given the human and financial resources it needed for such work.

73. **Mr. Zhdanovich** (Belarus) commended the work accomplished by the Commission during the period under review. Although the Commission had been unable to complete any of the items on its agenda, it had made significant progress on the draft Convention on Assignment in Receivables Financing, on electronic commerce and on privately financed infrastructure projects, and in the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

74. His delegation also commended the work of the Working Group on International Contract Practices. The Working Group had previously adopted the title, the preamble and draft articles 1 to 24 of the draft Convention on Assignment in Receivables Financing, and his delegation hoped that work on the optional substantive law priority rules would be completed expeditiously so that the draft Convention could be submitted to the Commission for adoption in 2000.

75. He expressed satisfaction at the progress made in the preparation of the draft legislative guide on privately financed infrastructure projects. He noted, however, that the document under consideration (A/CN.9/458) was rather lengthy and suggested that it should be shortened and made more accessible. The legislative guide would be a useful tool for countries with economies in transition that were reviewing and modernizing their legislation pertaining to privately financed infrastructure projects and for countries endeavouring to attract foreign investment for such projects.

76. It was important to continue to monitor the implementation of the 1958 New York Convention. His Government had replied to the secretariat's questionnaire on the subject and was looking forward to the analysis of the information gathered. His delegation called upon the States parties to the Convention that had not yet replied to the questionnaire to do so.

77. The Commission's work in training and technical assistance and in the dissemination of judicial and arbitral awards was commendable. The Commission's seminars and symposia, including those organized at the regional level, were indeed necessary, and the participation of representatives of countries with economies in transition was especially important. It would be useful to conduct briefings during the seminars for legislators, judges, arbitrators and other users of UNCITRAL texts.

78. **Mr. Rao** (Observer for the World Intellectual Property Organization (WIPO)), referring to chapters II and III of the report, said that his delegation had taken note of the proposals made during the discussion of paragraphs 17 to 21 of the draft legislative guide on privately financed infrastructure projects. One of those proposals was that the host country should enact criminal law provisions to combat infringements of intellectual property rights. While awaiting further discussions in the Working Group on that and other proposals, his delegation welcomed the suggestion made in the report (para. 317) concerning possible future cooperation between UNCITRAL and WIPO in respect of rights in

electronic data and software. As WIPO was the sole United Nations agency charged with promoting and protecting intellectual property law and UNCITRAL was the legal arm of the United Nations in international trade law, cooperation between them could be productive.

79. The global economy was currently driven more by technology and knowledge than by physical resources. Intellectual property and electronic commerce affected each other in numerous ways: intellectual property required protection, for instance, from cybersquatters who registered Internet addresses or domain names using recognized trade marks with the object of selling them back at a higher price to the genuine owners. Other abuses included registering Internet addresses which closely resembled a protected trade mark with a view to acquiring business illegally. In the past year WIPO had undertaken global consultations on the subject of Internet domain names and had made recommendations to the Internet Corporation for Assigned Names and Numbers (ICANN). It had recommended that applicants for registration of domain names should conform to certain best practices and administrative procedures, including a uniform and mandatory dispute resolution system to compel cybersquatters to relinquish names acquired illegally, and an exclusion mechanism in favour of owners of well-known trade marks so that others could not register them. ICANN had adopted the thrust of the WIPO recommendations and was considering other outstanding issues.

80. A global conference on electronic commerce had been held at Geneva from 14 to 16 September 1999 under the auspices of WIPO. UNCITRAL had participated in the conference, the highlight of which had been a 10-point Digital Agenda proposed by the Director-General of WIPO. The Agenda included the following: broadening the participation of developing countries in electronic commerce through the use of WIPONET; ensuring the entry into force of the WIPO Copyright Treaty and the Performances and Phonograms Treaty; adjusting the international legislative framework to facilitate electronic commerce; implementing the WIPO recommendations on domain names; establishing appropriate principles at the international level to determine the circumstances of intellectual property liability of on-line service providers; adjusting the institutional framework for using intellectual property in the global economy through, *inter alia*, electronic copyright management systems, on-line licensing of the digital expression of cultural heritage, and on-line administration of intellectual property disputes; introducing on-line procedures for the filing and administration of international applications for the Patent Cooperation Treaty and other treaties; and coordinating with other international organizations on such issues as the validity of electronic contracts and jurisdiction.

81. **Mr. Renger** (Chairman of the United Nations Commission on International Trade Law) said that UNCITRAL was grateful for the attention the Committee had given to its work. The endorsement of Member States was essential to UNCITRAL, as it was the only body in the United Nations system which promoted the unification and harmonization of trade law on a global basis. One of the Commission's strengths was that it operated through consensus. Achieving consensus was not always easy, given the many legal traditions and cultures that Member States represented, but it was possible if all delegations were willing to compromise, as they had been thus far.

82. Some delegations had stressed the need to rationalize the Commission's programme of work, while others — the majority — had supported the Commission's appeal for sufficient resources. UNCITRAL was always aware of the need to make the most effective use of its limited resources. Nevertheless, global acceptance of the Commission's work was possible only with the participation of all delegations.

83. It had always been a matter of serious concern to him that sessional documentation was often issued very late. Such delays were never due to slow editing by the UNICTRAL secretariat, but rather to the lack of translation capacity in the United Nations Secretariat. If, as was sometimes proposed, UNCITRAL entrusted more work to expert groups than to the formal working groups, the documentation would be available only in the working language, if at all. That would not help to maintain transparency in the Commission's work, which was vital to its global acceptance.

The meeting rose at 4.45 p.m.

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Chairman: Ms. Hallum ..... (New Zealand)

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Agenda item 159: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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In the absence of Mr. Mochochoko (Lesotho), Ms. Hallum (New Zealand), Vice-Chairman, took the Chair.

The meeting was called to order at 3.15 p.m.

Agenda item 159: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization
(A/54/33, 363 and 383)

1. **The Chairman** drew attention to chapter IV of the report of the Secretary-General on implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/54/383), entitled "Views communicated by Governments regarding the report of the ad hoc expert group meeting on assistance to third States affected by the application of sanctions", and said that the Secretariat had also received comments from Bulgaria, Turkey, and Yemen which would be contained in an addendum to the report that would be issued in due course.

2. **Ms. Lehto** (Chairperson of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization), introducing the Special Committee's report (A/54/33), said that the Special Committee had adopted three recommendations to the Sixth Committee at its session in April 1999. On the question of assistance to third States affected by sanctions, the Committee had recommended, first, that the General Assembly should continue to consider the subject in an appropriate and substantive manner and framework, and second, that the General Assembly should invite the Secretary-General to submit a report on the deliberations and main findings of the ad hoc expert group on that subject and to provide relevant information on other developments, particularly on the work of the Security Council sanctions committees.

3. The third recommendation, concerning practical ways and means of strengthening the International Court of Justice, took the form of a draft resolution which the Special Committee was recommending to the General Assembly for adoption and which was contained in paragraph 122 of the report. In its debates, the Special Committee recognized that the ability of the Court to discharge its mandate in the face of an increasing workload depended on more than working methods, and the hope had been expressed that the competent bodies might give appropriate consideration to the Court's requests for additional budgetary resources.

4. The Special Committee had moved forward with regard to two other items on its agenda. It had completed a first preliminary reading of the working paper entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation", and it had taken a new approach, generally deemed promising to the proposal to establish a dispute prevention and early settlement service which placed more emphasis on existing methods of dispute settlement.

5. Among the other items considered by the Special Committee, a proposal to amend the Statute of the International Court of Justice had been withdrawn. A new proposal to seek an advisory opinion from the Court as to the legal consequences of the resort to the use of force by States without the prior authorization of the Security Council or outside the context of self-defence had been introduced, but the debate on it had been inconclusive. With the aim of enhancing the efficiency and relevance of its work, the Special Committee had decided to review at its next session the procedure for adopting its report, including the possibility of changing the nature of the report.

6. **Ms. Flores Liera** (Mexico), speaking on behalf of the Rio Group, said that the implementation of Charter provisions related to assistance to third States affected by sanctions was an area in which the Special Committee could make a great contribution to strengthening the role of the Organization. Despite efforts to improve transparency in the sanctions committees and to reduce the effects of sanctions on third States, recourse to sanctions was nevertheless frequent, and consideration was not always given to the effects on third States. The Rio Group therefore welcomed the ad hoc expert group meeting that had been held to develop methods for assessing the consequences of sanctions on third States and to explore innovative and practical measures of international assistance to those States. It also welcomed the report of the Secretary-General on that topic (A/54/383) but regretted that delays in translation and publication had not allowed more time for in-depth consideration of the document. The Rio Group felt that sanctions must not only be effective but should also be targeted and, if possible, temporary. The formulation of principles and criteria for the imposition of sanctions would be highly useful and should continue to be part of the Committee's work.

7. The working paper submitted by the Russian Federation and Belarus concerning the maintenance of international peace and security raised issues of vital importance to the Organization. However, the General Assembly currently considered those issues in plenary meeting under the agenda item entitled "Report of the Secretary-General on the work of the Organization", and the Rio Group felt that that was the appropriate forum. The

Group wished to reaffirm its respect for the continued validity of the Charter and its principles.

8. The impact of the increased caseload on the functioning of the International Court of Justice was a source of concern, since excessive delays in proceedings could exacerbate disputes. While encouraging the Court to continue its efforts to reform its methods, the Rio Group would add its voice to the Court's appeal for an increase in resources in the budget for the biennium 2000-2001.

9. The Rio Group appreciated the Secretary-General's efforts to reduce the backlog in the publication of the supplements to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, as described in his report (A/54/363), and was encouraged that updating activities had been specifically budgeted for the next biennium. The Rio Group was particularly concerned about the years of delay in the publication of supplements in languages other than English. As a cost-saving measure, the Group proposed that if further reports were needed on the subject, they should be presented orally.

10. All the specific suggestions for improving the working methods and enhancing the efficiency of the Special Committee that had been made at its latest session deserved serious consideration. Priorities should be set in its agenda, and endless discussion of issues that had been thoroughly considered in the past should be avoided. The possibility of changing the duration of the Special Committee's session merited attention while earlier submission of proposals would facilitate fruitful discussion.

11. **Ms. Korpi** (Finland), speaking on behalf of the European Union, the associated countries Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia, and, in addition, Liechtenstein and Norway, said that those countries continued to take a great interest in mitigating the adverse impact of sanctions on third States, as demonstrated by the economic and humanitarian assistance they had given to such States. She drew attention in that connection to the information submitted by the European Commission to the Secretary-General and included in his report (A/54/383, paras. 64-68).

12. The recommendations contained in the Special Committee's report (A/54/33, para. 33) provided a good basis for further efforts to develop standards and rules aimed at minimizing the humanitarian impact of sanctions on vulnerable groups within the target State as well as their economic impact on third States. Greater use of sanctions that were aimed at specific individuals and entities of the target country could enhance their effectiveness while minimizing their humanitarian and economic impact, including on third States. The two expert seminars on targeted financial sanctions, held at Interlaken, Switzerland, and the symposium on Security Council targeted sanctions, held in New York, had produced ideas and suggestions deserving further consideration. A further seminar on targeted sanctions in the field of arms embargoes and travel bans would be held in Bonn in November.

13. With regard to the other items pertaining to the maintenance of international peace and security (A/54/33, paras. 13-104), the delegations on whose behalf she spoke were concerned at the persistent duplication of work by the Special Committee and other bodies. Caution should also be exercised with regard to the proposed draft resolution containing a request for an advisory opinion from the International Court of Justice (A/54/33, para. 90). The European Union was of the view that it was not useful to refer a generic question to the Court for an advisory opinion, as it was not clear what answer the Court could give, other than that the legal consequences of the use of armed force would depend upon all the circumstances of each case.

14. Turning to the topic of the peaceful settlement of disputes (A/54/33, paras. 105-121), the delegations on whose behalf she spoke shared the concern about the implications of the increasing workload of the Court for the Court's ability to discharge its mandate. The European Union supported the draft resolution on practical ways and means of strengthening the Court (A/54/33, para. 122) and noted with satisfaction that the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had given favourable consideration to the Court's budget requests.

15. As to the proposal to establish a dispute prevention and early settlement service (A/54/33, paras. 105-116), the European Union welcomed the new approach of placing more emphasis on existing methods of dispute prevention. The informal paper circulated by the delegation of the United Kingdom to complement the original Sierra Leone proposal provided a good basis for bringing the item to a successful conclusion.

16. The European Union attached considerable importance to the goal of eliminating the backlog in the publication of the supplements to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and ensuring the timely production of future volumes. In the case of the *Repertory*, the European Union commended the Secretary-General for his efforts to reduce the backlog. Now that *Repertory*-related tasks were

included as distinct activities within the relevant sections of the proposed programme budget, future work on the *Repertory* should be supported with adequate resources. Additional resources should also be identified to bring publication of the *Repertoire* up to date. Clear options were presented in the Secretary-General's report (A/54/383), including the possibility of voluntary contributions and the establishment of a specific training and internship programme.

17. While the Special Committee had made a significant contribution over the years to such areas as the peaceful settlement of disputes and the rationalization of United Nations procedures, that was not a reason to ignore the current need for improvement. The European Union strongly believed that the Special Committee's work should be further streamlined, bearing in mind the need to make the best use of the resources available, and she wished to draw attention to the most salient problems in the Special Committee's working methods.

18. First, the Special Committee's agenda was long and fragmented, with all items, including those on which agreement was not likely to be within reach in the foreseeable future, reappearing each year. It might be worthwhile to reconsider the idea of a cut-off mechanism; in any event, clear priorities should be established as to the order in which new or revised proposals were considered and the time devoted to them.

19. Secondly, consideration of the Special Committee's report was time-consuming, and she questioned whether it was necessary to adopt the report paragraph by paragraph, a procedure conducive to attempts to reopen substantive discussions. The Ad Hoc Committee established by General Assembly resolution 51/210, for instance, adopted only a slender procedural report, with an informal summary of the debates attached as an annex.

20. Lastly, the use of time allocated to the Special Committee had been less than optimal in recent years, resulting in a high number of cancelled meetings. The length of the sessions should be adjusted to the time needed for consideration of the different agenda items. As matters stood, two-week sessions were not justified; a case-by-case approach would seem more appropriate. In view of the heavy schedule of legal meetings in 2000, the next session of the Special Committee should not exceed five working days.

21. **Mr. Kawamura** (Japan) said it followed from Article 25 of the Charter that if sanctions were imposed as the result of a decision by the Security Council, Member States were bound to accept and implement them and to bear the related costs individually. While Article 50 provided that States confronted with special economic problems arising from preventive or enforcement measures taken against other States by the Security Council had the right to consult the Council with regard to a solution of those problems, that right did not amount to a right to obtain relief. However, his Government's position on the legal issue was without prejudice to its belief that it was important from the political point of view to deal effectively with the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions.

22. There was a need for a methodology for assessing the actual consequences suffered by third States as a result of the implementation of preventive or enforcement measures, and innovative and practical ways of providing international assistance to third States affected by the application of sanctions should be explored. His delegation welcomed the outcome of the ad hoc expert group meeting held in June 1998 but felt that the group's recommendations should be discussed carefully before they were implemented. The recommendation that a tentative list of potential effects of sanctions on third States should be drawn up was worth studying, and the prompt submission by the Secretary-General of an advance assessment of sanctions' potential impact on the target country and third States in particular would be very useful. While technical assistance might be provided by the Secretariat to States invoking Article 50 of the Charter, his delegation believed that the recommendations concerning Secretariat monitoring of the effects of sanctions and other related measures needed to be carefully studied from the viewpoint of feasibility and mandate. It was also important to ensure that the measures taken to address the problems of third States affected by the application of sanctions did not hamper the effective application of the sanctions themselves.

23. Turning to the report of the Secretary-General on *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* (A/54/363), he noted that those publications were potentially very useful, not only for delegations but also for the public in general. While welcoming the fact that new supplements were scheduled to be issued in 2000, and commending the efforts undertaken by the Secretariat in that regard, his delegation was concerned at the delays in publication, especially of the *Repertory of Practice of United Nations Organs*. The problem needed to be solved as a matter of urgency, and he urged the Secretariat to seek a practical solution using existing resources. The preparation of the two publications might be rationalized by avoiding the present overlap between them, especially with regard to Articles 23

to 54, 106 and 107 of the Charter, which related to the Security Council.

24. His delegation endorsed the recommendation made by the Special Committee regarding practical ways and means of strengthening the International Court of Justice and expressed its appreciation of the Court's efforts to respond to the double challenge of an increased workload and a shortage of resources. The cooperation of States in that regard was important, and serious consideration should be given to the practical suggestions made by the Court (A/53/326, annex, para. 3).

25. Concerning the Special Committee's working methods, he said that it was necessary first of all to strengthen the Special Committee itself to ensure that it could effectively address questions related to the strengthening of the United Nations. During the previous two years his delegation had strongly advocated a review of the Special Committee's working methods and had made a five-point proposal to that end.

26. First, his delegation believed that more time should be allowed between sessions of the Special Committee and of the Sixth Committee, thereby avoiding duplication of discussions in the two bodies. The next session of the Special Committee should therefore be scheduled later in the first half of 2000. During sessions a considerable amount of time was wasted by starting meetings late; if the time was used profitably, the agenda could be completed within one week. It was particularly important for the Special Committee, whose task it was to strengthen the role of the Organization, to set a good example for other bodies and to start meetings punctually.

27. A measure that would be conducive to intensive discussion within the Special Committee would be to insist on the early submission of documents by sponsor delegations in order to give other delegations time to report back to their capitals and prepare official comments. Rather than identifying new topics for the Special Committee to discuss, it might be more profitable to study possible mechanisms for decision-making on existing topics. He therefore urged sponsor delegations, once a fairly comprehensive exchange of views had been held on their proposals, to ask the Special Committee to decide whether it intended to continue to consider the topic in question, bearing in mind the usefulness of the discussions that had taken place and the likelihood of reaching a definitive result in the future.

28. It might not be easy for some delegations to agree to certain proposals, particularly the one involving reducing the length of the Special Committee's sessions. His delegation therefore requested the Secretariat to provide information on the uneconomical use of conference services by the Special Committee, which appeared to be the worst offender in that regard; such information might induce delegations to consider the matter seriously.

29. Since the possible review of the Special Committee's working methods had been under consideration for two years, it was time to implement those measures that had achieved wide acceptance. He therefore proposed that in 2000 the Special Committee should identify those measures and implement them with effect from the following session.

30. **Mr. Park Hee-kwon** (Republic of Korea) said that the Special Committee had played a vital role in taking up reform-related issues of a legal nature and that its discussions complemented the work of other United Nations bodies, with which, however, it should coordinate more effectively.

31. The implementation of Charter provisions related to assistance to third States affected by sanctions was an issue that required prompt action on behalf of the countries involved, like his own, whose numbers were increasing. Judiciously adopted sanctions should be imposed in such a way as to achieve the desired objective as soon as possible, and their scope and severity should be in proportion to the violation. His delegation concurred with the conclusion of the ad hoc expert group convened pursuant to General Assembly resolution 52/162 that the actual impact of sanctions on individual third States might differ substantially from case to case, and that consequently any common methodology adopted should be applied on a case-by-case basis. The burden would then be on the Secretariat to assess the potential impact of sanctions, monitor their effect, prepare explanatory materials or appoint a special representative whenever sanctions might be applied. The Secretary-General should be invited to present his views on the expert group report in general and on the feasibility of its recommendations in particular, and the report should also be considered carefully by the Special Committee.

32. Further consideration should be given to the Russian working paper concerning the legal basis for United Nations peacekeeping operations (A/54/33, paras. 70 and 71), but without encroaching on the competence of bodies with primary responsibility in the field. The additional legal framework proposed might make peacekeeping operations more orderly and efficient, but the guidelines would have to be flexible enough to accommodate the complexity and specificity of each operation.

33. While the International Court of Justice had responded in various ways to the dual challenge of an increased workload and insufficient resources, it must be provided as

soon as possible with sufficient means to continue the important work entrusted to it by the Charter. The proposal to extend the contentious jurisdiction of the Court to international organizations, put forward by Guatemala but subsequently withdrawn for lack of support, it merited further study, especially in the light of the growing role of international organizations, which should eventually be drawn into the system of judicial settlement.

34. In principle, the Republic of Korea supported the abolishment of the Trusteeship Council, although it noted with interest the Secretary-General's proposal to reconstitute the Council as a forum in which Member States could exercise their collective trusteeship of the global environment and common areas and provide a link to civil society on those issues. That proposal would have to be addressed within the overall framework of United Nations reform, since it entailed amending the Charter. The proposal by Malta to give the Council oversight over the global commons needed further consideration because a number of areas thought of as part of the common heritage of mankind were already regulated by various organizations with their own legal regimes.

35. His delegation believed that the Special Committee's working methods needed improvement. The Special Committee should, for instance, concentrate on a few selected topics and establish priorities in taking up the many proposals before it, which should be submitted well before the beginning of any session. It should also consider, as the European Union and others had proposed, cutting off debate on a particular topic after a fixed period of discussion that had yielded no tangible results.

36. **Ms. Gnecco** (Colombia) said she believed that the Special Committee was in a position to further the legal development of Charter provisions in the context of United Nations reform. It should, moreover, carefully consider the findings of the ad hoc expert group with regard to assistance to third States affected by sanctions and to the measures that body had recommended for minimizing collateral damage from sanctions. The nature of sanctions regimes, which were exceptional measures of last resort taken in the face of a clear threat to international peace and security, should be studied in depth, and adequate attention should be given to their adverse effects on the population of the target country. Her delegation supported in particular the expert group proposal regarding the appointment by the Secretary-General of a special representative to assess the consequences incurred by third countries and to determine appropriate assistance measures.

37. The Special Committee's methods of work should be improved and any overlap with the mandates of other United Nations bodies and duplication of work should be avoided. The preparation of a short-term and medium-term programme of work and the early submission of proposals by delegations would foster smoother and more substantive discussions within the Special Committee. No proposal, however, should be rejected out of hand without some discussion, nor was there any need to shorten the duration of Special Committee sessions.

38. **Mr. Nungka** (Malaysia), commenting on the working paper submitted by the Russian Federation on basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation, said that sanctions were an extreme measure of last resort, to be applied after alternative measures under Article 40 of the Charter had been exhausted, and after the Security Council had carefully defined their scope and time-frame. The negative effects of sanctions on human lives and property should, moreover, be reviewed continuously. Since the Charter had never contemplated open-ended sanctions, Malaysia supported the proposed review of the sanctions regime as a whole and the concept that sanctions should be imposed for a definite period and lifted as soon as the intended objective had been achieved.

39. The Russian working paper properly distinguished between Charter-based sanctions and sanctions imposed unilaterally. The Movement of Non-Aligned Countries had also taken a position, which Malaysia endorsed, condemning the continued unilateral application of coercive measures by certain Powers against certain States with a view to denying them the right to decide their own political, economic or social systems. The Russian working paper further stressed the importance of the humanitarian limits of sanctions. Sanctions should not be used to punish a State but to modify its behaviour so that it no longer posed a threat to international peace and security, nor should they cause unacceptable suffering or the denial of basic economic and social rights of the civilian population of the State concerned.

40. Under Article 50 of the Charter, the Security Council had a responsibility to mitigate the damage caused by sanctions to third States, which often incurred high economic costs as the major economic partners of target States. Yet assistance to third States affected by sanctions had been ad hoc at best, ineffective and inadequate at worst. His delegation supported the idea put forward by the ad hoc expert group of developing a methodology for assessing the consequences incurred by third States as a result of sanctions and exploring possible international assistance measures to

such States. Before imposing sanctions on any State, the Security Council should request an advance assessment of the possible effects of sanctions on both the targeted country and third States, and should refrain from imposing sanctions that caused unnecessary and indiscriminate harm to human life and property beyond the intended target. The Movement of Non-Aligned Countries had on different occasions underscored the importance of assistance to third States affected by sanctions and had proposed the establishment of a trust fund to alleviate their economic difficulties. Malaysia supported that proposal, and also the view that non-financial measures, such as special trade preferences, were needed to alleviate the adverse effects of sanctions on third States.

41. Concerning the legal framework of peacekeeping operations, he noted that the success of any such operation depended on a clear definition of its mandate, command structure and rules of engagement, and on a flexible or renewable time-frame, as the situation required. Peacekeeping operations should be guided strictly by Charter principles like non-interference in the affairs of States and respect for their sovereignty and territorial integrity. Only the Security Council had a legal mandate to deploy peacekeeping operations, under Article 24 of the Charter. Interventions to support humanitarian action within States also required Security Council approval, according to the Charter. Consideration of the proposed draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts fell within the Special Committee's mandate and did not duplicate the work of other United Nations bodies dealing with peacekeeping, with which the Special Committee should improve its coordination.

42. His delegation continued to have reservations regarding any new role for the Trusteeship Council as a guardian of the common heritage of mankind, a concept that was complex and controversial. Malaysia's position was that the Trusteeship Council had accomplished its objectives and that its abolishment was therefore both timely and consistent with the ongoing United Nations reform. The new millennium needed a United Nations that was strong, united, lean and effective and had rid itself of the baggage of the past century.

43. **Mr. Lavrov** (Russian Federation) said that on the threshold of the third millennium humanity once again faced a principled choice between a multipolar system of world order based on the supremacy of international law and the chaos of unilateral approaches. As the sole universal mechanism for ensuring international peace and security, the United Nations had a special role to play. Only through collective effort, on the basis of universality, was it possible to ensure the further development of generally accepted international legal principles which would guarantee the defence of the individual but exclude armed encroachments on sovereign States and arbitrary military measures that circumvented the Charter of the United Nations and the Security Council. To that end it was necessary to elaborate additional criteria for the use of force in accordance with the Charter, including in humanitarian emergencies. A clear interpretation of humanitarian crises must also be developed on the basis of international law.

44. The Russian initiative to have the legal aspects of the use of force in international relations considered at the Millennium Summit was designed to accomplish those tasks. His delegation was prepared to engage in the widest possible dialogue on that issue.

45. The working paper in defence of the key provisions of the Charter (A/54/33, paras. 89-104), submitted to the Special Committee by his delegation and the delegation of Belarus, followed the same trend: it reaffirmed the strictness of the Charter provisions regulating the use of force and stressed the need to strengthen the role of the Organization in the maintenance of international peace and security. Most importantly, the document proposed to involve the International Court of Justice, the highest judicial organ of the United Nations, in resolving the issue of the right of States to use force in circumvention of the Charter. The discussion that had taken place in the Special Committee and the general debate at the current session of the General Assembly confirmed the urgent necessity of considering the draft further, and he urged the Sixth Committee to take the necessary decisions to that end.

46. His delegation viewed the Special Committee's work on sanctions issues as a priority. It noted with satisfaction the article-by-article consideration given to the working paper submitted by the Russian Federation entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/54/33, paras. 34-69). There was a growing trend among the members of the Special Committee to take a more balanced approach to the mechanism for introducing and implementing sanctions and the need for a comprehensive analysis of their humanitarian impact. It was important not to lose the momentum gained and to continue the discussion of the document at the Special Committee's next session. The approval by all Member States of additional recommendations concerning the use of sanctions would give a significant boost to the work of the Security Council and would enhance the legitimacy of its decisions.

47. It was important to continue the work of the Special Committee on the question of implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions. The methodology proposed in the Secretary-General's report (A/53/312) for assessing the damage to third States resulting from the application of sanctions appeared to be generally acceptable. However, a number of issues required further clarification, namely, the regime that would be applied to States indirectly affected by sanctions, the scale that would be used to determine the volume of assistance to be provided to them, and whether their level of economic development and their mutual relations with the State that was the object of the sanctions would be taken into account. While the international financial institutions might have a role to play in evaluating the economic impact of sanctions, the principal organs of the United Nations, as defined in the Charter, would have a decisive influence over decisions regarding the provision of assistance to third States. His delegation supported the Special Committee's recommendations concerning further consideration of the report of the ad hoc expert group on a methodology for assessing the consequences of sanctions.

48. The well-known Russian initiatives to develop the legal basis of peacekeeping operations were aimed at elaborating recommendations to improve peacekeeping operations. Such operations should be linked to the efforts to achieve a political settlement of conflicts and to the negotiating process, and should take place in accordance with Security Council sanctions and under the Council's control. In view of the multifaceted nature of the topic, the Special Committee should concentrate on its legal aspects at its next session.

49. With regard to the Trusteeship Council, the objective reality was that its functions were frozen and its human and financial resources were being used by other United Nations structures. The idea of assigning any additional tasks to the Council, such as protecting the "global commons" or the "common heritage of mankind", appeared controversial and somewhat artificial. Any attempt to change the mandate of the Trusteeship Council would inevitably entail a review of the Charter and should therefore be approached with extreme caution.

50. His delegation generally supported the draft resolution recommended by the Special Committee to ensure that the International Court of Justice was provided with the financial resources to adequately carry out its functions (A/54/33, para. 122). That timely measure would not only enable the Court to maintain its pace of activity but would also promote its efforts to protect the basic principles and norms of international law.

51. His delegation supported the Secretary-General's efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*. The proposals to establish a voluntary trust fund and to organize a specific training programme for young professionals should be studied thoroughly, including from the standpoint of their financial implications.

52. The past year had generally confirmed that the Special Committee's mandate enabled it to play a significant role in the consideration of various legal aspects of the Organization's work. His delegation was in favour of maintaining the work of the Special Committee in its current format. It shared the view of many delegations that it was pointless to establish working groups within other United Nations bodies on issues that fell within the Special Committee's mandate. That in no way precluded but rather presupposed the maintenance of close contact between the Special Committee and other United Nations bodies, including through joint meetings and exchanges of information.

53. **Mr. Lavalle-Valdes** (Guatemala) said that the proposal submitted by his delegation to amend the Statute of the International Court of Justice to extend its competence to disputes between States and intergovernmental organizations was supported by a considerable body of legal opinion. In 1971, when the Secretary-General had consulted States on how to enhance the efficiency of the Court, 18 States had been in favour of extending the Court's jurisdiction along those lines. Since then, many authors of articles in international law reviews had considered the idea feasible and useful. The Court itself had suggested in 1990 such an extension of its jurisdiction, and in 1995 the President of the Court had spoken in favour of the idea before the General Assembly.

54. At the most recent session of the Special Committee his delegation had withdrawn its proposal because of a lack of interest. It appeared that opposition had been based not on technical considerations, but on a lack of political will. Yet it was possible that opinion could shift again in the future. In the meantime, having the proposal and debate on the record might encourage scholars to pursue the topic.

55. In its nearly 24 years of existence, the Special Committee had done much useful work. One of its accomplishments had been to bring the question of assistance to third States affected by sanctions to the attention of the General Assembly. But perhaps the process of ensuring equitable implementation of Article 50 of the Charter of the United Nations was so firmly under way that

it no longer required impetus from the Special Committee. In any case, the Special Committee's influence was somewhat weakened by the regrettable fact that, owing to scheduling, the relevant reports of the Secretary-General were taken up by the General Assembly before they could be considered by the Special Committee. Most of the other proposals before the Special Committee appeared to be at a standstill, and his delegation feared that unless new and more promising proposals were submitted, most of the Special Committee's work would be unproductive, at least in the short term.

56. With regard to the working methods of the Special Committee, he said that since it was the Special Committee's role to make recommendations to the General Assembly, all proposals submitted to it should take the form of a General Assembly declaration, resolution or decision. Any proposal related to a resolution already adopted by the General Assembly should clearly indicate the resolution to which it referred. In addition, it was extremely important to avoid duplication.

57. As to the proposal concerning basic conditions and criteria for the introduction of sanctions, two points needed clarification. Many delegations had observed that before sanctions could be imposed, all means of peaceful settlement of disputes must first be exhausted. However, Chapter VII of the Charter did not deal with dispute settlement, but with actions to be taken in the face of threats to the peace, breaches of the peace and acts of aggression. Another widely expressed idea was that there should a time limit, fixed *ab initio*, to any sanctions imposed. Yet since the purpose of sanctions was to change the behaviour of the State against which they were being imposed, it would seem clear that sanctions must remain in place until their goal had been achieved, even if modifications were made for humanitarian reasons.

58. His delegation was glad to see that a final decision was near on the Sierra Leone proposal for the establishment of a dispute prevention and early settlement service, and it would be pleased to lend its support. With regard to the proposals concerning the Trusteeship Council, the proponents should indicate what amendments would be necessary to the Charter in order to implement their proposals; if they did not feel that amendments would be necessary, they should indicate the means by which they proposed to achieve their purposes. His delegation was pleased to see that letters concerning additional funding for the International Court of Justice, referred to in paragraph 118 of the Special Committee's report, had been sent. His delegation also supported the resolution contained in paragraph 122 of the report and would be proposing additional language to strengthen it.

59. **Mr. Gomaa** (Egypt) said that his delegation had always insisted that the sanctions permitted by the Charter of the United Nations should only be imposed on an exceptional basis in the cases envisaged in Chapter VII of the Charter, and after exhaustion of all means of peaceful resolution set forth in Chapter VI. In addition, sanctions should be applied in accordance with clear and objective criteria, and for a limited period, so that they would not be used by the Council for political purposes. Similarly, the political views of individual Council members, particularly the permanent members, should not prevail over those of the Council and of the United Nations as a whole.

60. His delegation had observed the collateral damage that had been caused by sanctions imposed pursuant to Chapter VII, both to the people of the State that was the target of the sanctions, as in the case of Iraq and the Libyan Arab Jamahiriya and to third States with interests linked to those of the State against which sanctions had been imposed. Unfortunately, the sanctions imposed on certain States under Chapter VII of the Charter had caused severe damage to third States and their people, including his own country.

61. The Charter was not intended to harm the interests of third States, and it provided a mechanism, so far unused by the Council, whereby the Council could consult the States concerned and ascertain their views before deciding to impose sanctions. His delegation therefore welcomed the Secretary-General's report on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions (A/54/383). In that connection, his delegation again called on the Council to consider permanent arrangements for holding consultations under Article 50 of the Charter with third States that were likely to face special economic problems as a result of the implementation of preventive or enforcement measures imposed by the Council, with a view to solving those problems and finding ways and means of enhancing the effectiveness of its action and defining the measures to be applied in considering requests for assistance from adversely affected States.

62. His delegation also welcomed the statement by the President of the Security Council (S/1999/92) to the effect that all members of the Council had agreed to use the practical proposals set forth in that document to enhance the work of the sanctions committees. All the main organs of the United Nations and the Committee for Programme and Coordination (CPC) had a role to play in finding a solution to the economic problems suffered by third States, and he

called on the organizations of the United Nations system, the international financial institutions and other international and regional organizations, as well as on the Member States, to join in the efforts to ensure the equitable sharing of a burden that was currently borne by third States alone. His delegation welcomed the efforts being made to ease the sufferings of the peoples of target and third States through the use of targeted sanctions.

63. With reference to Article 53 of the Charter, his delegation wished to raise the question of the legitimacy of enforcement action taken by regional arrangements or agencies without reference to the Security Council. Article 53 first specified that the Council could utilize such arrangements or agencies to take such measures under its authority. Thus, the proposal submitted by the Russian Federation and Belarus to seek an advisory opinion from the International Court of Justice on the legal issues connected with the right of a State or group of States to resort to force outside the framework of legitimate self-defence would have the effect of confirming the inviolability of the Charter and the necessity of relying on it to prevent or mitigate disputes, and would consequently strengthen the role of the Organization.

64. His delegation welcomed the progress made in the publication of supplements to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*. It was, however, a matter of regret that, in spite of the increase in the work of the Council in recent years, there had been no corresponding increase in the number of staff responsible for preparing the *Repertoire* and that their number had in fact declined. His delegation supported the Secretary-General's efforts to make up for the backlog and called on States to provide financial and other assistance to enable the Secretariat to complete its work. Lastly, while his delegation noted the efforts made by the Secretary-General to ensure the publication of the *Repertory* and the *Repertoire* in English, French and Spanish, it regretted that no mention was made of the other official language versions and drew attention to the need to use all the official languages of the Organization equally.

The meeting rose at 5.15 p.m.